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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,240	03/25/2004	Robert J. Egan	5220-1	1768

33486 7590 07/01/2005

HEIMBECHER & ASSOCIATES, LLC.  
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LAKEWOOD, CO 80228-6512

EXAMINER

COTTINGHAM, JOHN R

ART UNIT	PAPER NUMBER
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2116

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/810,240

Applicant(s)

EGAN, ROBERT J.

Examiner

John R. Cottingham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 May 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 18-20 is/are allowed.  
6) ☒ Claim(s) 1-17 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

PS

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gomez et al. U.S. Patent Application Publication 2004/0108342. Gomez et al. shows all of the claimed subject matter of a lockable protective cap in Figures 1-7.

Regarding claim 1, a lockable protective cap 36 for a post having a top end and an engageable surface, the cap 36 comprising: a sidewalls having a first end and an open second end, said sidewall forming a post receiving opening; a cover 51 at least partially closing said first end of said sidewall; a locking member 44 extending inwardly from said sidewall for engaging the engageable surface of the post, said locking member 44 comprising end a firstend disposed at the sidewall, a second end disposed opposite said first end, a ramp surface (sloping surface of 44) disposed between said first end and said second end, and an engaging surface disposed at said second end for locking the engagable surface of the post within said post-receiving opening.

Regarding claim 2, wherein said cover 36 completely encloses said first end of said sidewall.

Regarding claim 3, wherein said cover 36 provides a protective lip 42 at said first end of said sidewall for covering at least a portion of the top end of the post.

Regarding claim 4, wherein said locking member 44 extends inwardly from said sidewall at an angle from about 40 degrees to about 50 degrees.

Regarding claim 5, wherein said locking member 44 is formed by a portion of said sidewall extending inwardly into said post-receiving opening.

Regarding claim 6, wherein said locking member 44 comprises a rib.

Regarding claim 7, wherein said rib 44 extends substantially around the perimeter of said post-receiving opening of said sidewall.

Regarding claim 9, wherein said locking member 44 is formed unitarily with said sidewall. (it is a unitary piece once assembled).

Regarding claim 10, wherein said locking member 44 comprises a surface for sliding over the engageable surface of the post.

Regarding claim 11, wherein at least one of said locking member 44 and said sidewall are deformable to slide over the engageable surface of the post. (inherent from the figures)

Regarding claim 12, wherein said locking member comprises a tab 44.

Regarding claim 13, wherein said locking member 44 comprises a distal surface displaced from said sidewall for engaging the engageable surface of the post.

Regarding claim 14, wherein a distance between an inner surface of said cover and an engaging surface of said locking member comprises a distance of at least about a center-to-center spacing between engageable surfaces of the post.

Regarding claim 15, wherein a distance between an inner surface of said cover and an engaging surface of said locking member comprises a distance of at least about

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two inches. (The size is not disclosed but it is inherent that it is about 2 inches) (A change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).)

Regarding claim 16, wherein a distance between an inner surface of said cover and an engaging surface of said locking member comprises a distance of at least about a center-to-center spacing between engageable surfaces of the post plus about the length of the engageable surface of the post.

Regarding claim 17, wherein a distance between an inner surface of said cover and an engaging surface of said locking member comprises a distance of at least about 2.75 inches. (The size is not disclosed but it is inherent that it is about 2.75 inches) (A change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).)

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

### ***Allowable Subject Matter***

4. Claims 18-20 are allowed.

### ***Response to Arguments***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John R. Cottingham whose telephone number is (571) 272-7079. The examiner can normally be reached on Monday - Thursday, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on (571)272-3670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'John R. Cottingham', with a long horizontal flourish extending to the right.

John R. Cottingham  
Primary Examiner  
Art Unit 2116

jrc